

DETAILED ACTION

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because Figures 22a, 22b, 23a, 23b, and 23c all possess black backgrounds and are difficult to read. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: The prior art, Osman et al. (WO 00/72821 cited on PTO Form 1449), teach a microfoam comprising a physiologically acceptable gas that is dispersible in the blood and an aqueous sclerosant liquid. The physiologically acceptable gas preferably comprises 99% or more oxygen with the remainder being carbon dioxide, nitrogen and trace gases in the proportion found in atmospheric air. (See abstract and page 9, paragraphs 1 and 3). Applicant has provided a Declaration Under 35 USC 1.132 (filed on January 29 2010) indicating that the instantly claimed concentration of nitrogen gas (0.01 to 0.8%) in the gas phase of the foam composition unexpectedly resulted in virtually no bubble formation in rat cremaster vessels whereas the composition taught by Osman et al.

resulted in the formation of 27 bubbles in the rat cremaster vessels. Applicant has further indicated in the Declaration that elimination or reduction of bubbles in the vessels would result in the reduce likelihood of the onset of neurological symptoms and visual disturbances that are caused by presence of bubbles in the vessels. Osman et al. neither teach or suggest the adjustment of the amount of nitrogen gas in the composition to the amounts instantly claimed in order to attain the unexpected results described by the Applicant.

The examiner requested that colored copies of attachment B (filed on 12/3/09) identified on page 3 of the declaration filed on 1/29/10 be submitted. Applicant submitted 3 colored copies of attachment B and these copies were viewed by the examiner.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Claims 1-5,9-13,17,20 and 21 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ABIGAIL FISHER whose telephone number is (571)270-3502. The examiner can normally be reached on M-Th 9am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Abigail Fisher
Examiner
Art Unit 1616

/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616